

A.1 Cross-Reference Table of Public Law 95-109 Section Numbers with 15 U.S.C. Section Numbers

The Fair Debt Collection Practices Act, as currently codified at 15 U.S.C. § 1692 *et seq.*, is reprinted in this appendix. Because many cases, articles, and the Federal Trade Commission refer to the Public Law 95-109 section numbers, the following table is provided. The Public Law 95-109 section numbers are also in brackets following each heading of the Act reprinted in this appendix.

Public Law Section	U.S.C. Section	Manual Section	Codified Heading at 15 U.S.C.
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A.2 Fair Debt Collection Practices Act¹

15 U.S.C. § 1692 *et seq.*; Pub. L. No. 95-109, 91 Stat. 874 (Sept. 20, 1977); Pub. L. No. 95-473, 92 Stat. 1466 (Oct. 17, 1978); Pub. L. No. 95-630, 92 Stat. 3680 (Nov. 10, 1978); Pub. L. No. 98-443,

98 Stat. 1708 (Oct. 4, 1984); Pub. L. No. 99-361, 100 Stat. 768 (July 9, 1986); Pub. L. No. 101-73, 103 Stat. 440 (Aug. 9, 1989); Pub. L. No. 102-242, 105 Stat. 2301 (Dec. 19, 1991); Pub. L. No. 102-550, 106 Stat. 4082 (Oct. 28, 1992); Pub. L. No. 104-88, 109 Stat. 949 (Dec. 29, 1995); Pub. L. No. 104-208, 110 Stat. 3009-425 (Sept. 30, 1996).

¹ A note in 15 U.S.C. § 1601 cites section 801 of Pub. L. 95-109, 91 Stat. 874 (Sept. 20, 1977) which provided: "This title [enacting subchapter V of this chapter, section 1692 *et seq.* of this title] may be cited as the 'Fair Debt Collection Practices Act.'" A note in 15 U.S.C. § 1692 cites section 818 of Pub. L. 95-109, which provided: "This title [this subchapter] takes effect upon the expiration of six months after the date of its enactment [Sept. 20, 1977], but section 809 [section 1692g of this title] shall apply only with respect to debts for which the initial attempt to collect occurs after such effective date."

§ 1692. Congressional findings and declaration of purpose [Section 802 of Pub. Law]

(a) There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.

(b) Existing laws and procedures for redressing these injuries are inadequate to protect consumers.

(c) Means other than misrepresentation or other abusive debt collection practices are available for the effective collection of debts.

(d) Abusive debt collection practices are carried on to a substantial extent in interstate commerce and through means and instrumentalities of such commerce. Even where abusive debt collection practices are purely intrastate in character, they nevertheless directly affect interstate commerce.

(e) It is the purpose of this subchapter to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.

§ 1692a. Definitions [Section 803 of Pub. Law]

As used in this subchapter—

- (1) The term “Commission” means the Federal Trade Commission.
- (2) The term “communication” means the conveying of information regarding a debt directly or indirectly to any person through any medium.
- (3) The term “consumer” means any natural person obligated or allegedly obligated to pay any debt.
- (4) The term “creditor” means any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.
- (5) The term “debt” means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.
- (6) The term “debt collector” means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Notwithstanding the exclusion provided by clause (F) of the last sentence of this paragraph, the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts. For the purpose of section 1692f(6) of this title, such term also includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interests. The term does not include—
 - (A) any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;
 - (B) any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so

related or affiliated and if the principal business of such person is not the collection of debts;

- (C) any officer or employee of the United States or any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties;
- (D) any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;
- (E) any nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors; and
- (F) any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity (i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement; (ii) concerns a debt which was originated by such person; (iii) concerns a debt which was not in default at the time it was obtained by such person; or (iv) concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.
- (G) Redesignated (F).²
- (7) The term “location information” means a consumer’s place of abode and his telephone number at such place, or his place of employment.
- (8) The term “State” means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing.

§ 1692b. Acquisition of location information [Section 804 of Pub. Law]

Any debt collector communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall—

- (1) identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer;
- (2) not state that such consumer owes any debt;
- (3) not communicate with any such person more than once unless requested to do so by such person or unless the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information;
- (4) not communicate by post card;
- (5) not use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that the debt collector is in the debt collection business or that the communication relates to the collection of a debt; and
- (6) after the debt collector knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, such attorney’s name and address, not communicate with any person other than

² 15 U.S.C. § 1692a(6)(E), (F), (G) amended by Pub. L. No. 99-361, 100 Stat. 768 (July 9, 1986). See §§ 3.2.2, 5.5.14, *supra*.

that attorney, unless the attorney fails to respond within a reasonable period of time to communication from the debt collector.

§ 1692c. Communication in connection with debt collection [Section 805 of Pub. Law]

(a) **Communication with the consumer generally**—Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt—

- (1) at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8 o'clock antimeridian and before 9 o'clock postmeridian, local time at the consumer's location;
- (2) if the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer; or
- (3) at the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication.

(b) **Communication with third parties**—Except as provided in section 1692b of this title, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.

(c) **Ceasing communication**—If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt, except—

- (1) to advise the consumer that the debt collector's further efforts are being terminated;
- (2) to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor; or
- (3) where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy.

If such notice from the consumer is made by mail, notification shall be complete upon receipt.

(d) **Definitions**—For the purpose of this section, the term "consumer" includes the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator.

§ 1692d. Harassment or abuse [Section 806 of Pub. Law]

A debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

- (1) The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person.
- (2) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader.
- (3) The publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of section 1681a(f) or 1681b(3) of this title.
- (4) The advertisement for sale of any debt to coerce payment of the debt.
- (5) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.
- (6) Except as provided in section 1692b of this title, the placement of telephone calls without meaningful disclosure of the caller's identity.

§ 1692e. False or misleading representations [Section 807 of Pub. Law]

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

- (1) The false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any State, including the use of any badge, uniform, or facsimile thereof.
- (2) The false representation of—
 - (A) the character, amount, or legal status of any debt; or
 - (B) any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.
- (3) The false representation or implication that any individual is an attorney or that any communication is from an attorney.
- (4) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action.
- (5) The threat to take any action that cannot legally be taken or that is not intended to be taken.
- (6) The false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to—
 - (A) lose any claim or defense to payment of the debt; or

- (B) become subject to any practice prohibited by this subchapter.
- (7) The false representation or implication that the consumer committed any crime or other conduct in order to disgrace the consumer.
 - (8) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.
 - (9) The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or which creates a false impression as to its source, authorization, or approval.
 - (10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.
 - (11) The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph shall not apply to a formal pleading made in connection with a legal action.³
 - (12) The false representation or implication that accounts have been turned over to innocent purchasers for value.
 - (13) The false representation or implication that documents are legal process.
 - (14) The use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization.
 - (15) The false representation or implication that documents are not legal process forms or do not require action by the consumer.
 - (16) The false representation or implication that a debt collector operates or is employed by a consumer reporting agency as defined by section 1681a(f) of this title.
- (3) The solicitation by a debt collector of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution.
 - (4) Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on such check or instrument.
 - (5) Causing charges to be made to any person for communications by concealment of the true purpose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees.
 - (6) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if—
 - (A) there is no present right to possession of the property claimed as collateral through an enforceable security interest;
 - (B) there is no present intention to take possession of the property; or
 - (C) the property is exempt by law from such dispossession or disablement.
 - (7) Communicating with a consumer regarding a debt by post card.
 - (8) Using any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by use of the mails or by telegram, except that a debt collector may use his business name if such name does not indicate that he is in the debt collection business.

§ 1692g. Validation of debts [Section 809 of Pub. Law]

(a) **Notice of debt; contents**—Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing—

- (1) the amount of the debt;
- (2) the name of the creditor to whom the debt is owed;
- (3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;
- (4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and
- (5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

(b) **Disputed debts**—If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) of this section that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address

§ 1692f. Unfair practices [Section 808 of Pub. Law]

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

- (1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.
- (2) The acceptance by a debt collector from any person of a check or other payment instrument postdated by more than five days unless such person is notified in writing of the debt collector's intent to deposit such check or instrument not more than ten nor less than three business days prior to such deposit.

³ 15 U.S.C. § 1692e(11) amended by Pub. L. No. 104-208 § 2305, 110 Stat. 3009 (Sept. 30, 1996). See §§ 3.2.2, 5.5.14, *supra*.

of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector.

(c) **Admission of liability**—The failure of a consumer to dispute the validity of a debt under this section may not be construed by any court as an admission of liability by the consumer.

§ 1692h. Multiple debts [Section 810 of Pub. Law]

If any consumer owes multiple debts and makes any single payment to any debt collector with respect to such debts, such debt collector may not apply such payment to any debt which is disputed by the consumer and, where applicable, shall apply such payment in accordance with the consumer's directions.

§ 1692i. Legal actions by debt collectors [Section 811 of Pub. Law]

(a) Any debt collector who brings any legal action on a debt against any consumer shall—

- (1) in the case of an action to enforce an interest in real property securing the consumer's obligation, bring such action only in a judicial district or similar legal entity in which such real property is located; or
- (2) in the case of an action not described in paragraph (1), bring such action only in the judicial district or similar legal entity—
 - (A) in which such consumer signed the contract sued upon; or
 - (B) in which such consumer resides at the commencement of the action.

(b) Nothing in this subchapter shall be construed to authorize the bringing of legal actions by debt collectors.

§ 1692j. Furnishing certain deceptive forms [Section 812 of Pub. Law]

(a) It is unlawful to design, compile, and furnish any form knowing that such form would be used to create the false belief in a consumer that a person other than the creditor of such consumer is participating in the collection of or in an attempt to collect a debt such consumer allegedly owes such creditor, when in fact such person is not so participating.

(b) Any person who violates this section shall be liable to the same extent and in the same manner as a debt collector is liable under section 1692k of this title for failure to comply with a provision of this subchapter.

§ 1692k. Civil liability [Section 813 of Pub. Law]

(a) **Amount of damages**—Except as otherwise provided by this section, any debt collector who fails to comply with any provision of this subchapter with respect to any person is liable to such person in an amount equal to the sum of—

- (1) any actual damage sustained by such person as a result of such failure;

(2)(A) in the case of any action by an individual, such additional damages as the court may allow, but not exceeding \$1,000; or

(B) in the case of a class action, (i) such amount for each named plaintiff as could be recovered under subparagraph (A), and (ii) such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of \$500,000 or 1 per centum of the net worth of the debt collector; and

(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court. On a finding by the court that an action under this section was brought in bad faith and for the purpose of harassment, the court may award to the defendant attorney's fees reasonable in relation to the work expended and costs.

(b) **Factors considered by court**—In determining the amount of liability in any action under subsection (a), the court shall consider, among other relevant factors—

(1) in any individual action under subsection (a)(2)(A), the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, and the extent to which such noncompliance was intentional; or

(2) in any class action under subsection (a)(2)(B) of this section, the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, the resources of the debt collector, the number of persons adversely affected, and the extent to which the debt collector's noncompliance was intentional.

(c) **Intent**—A debt collector may not be held liable in any action brought under this subchapter if the debt collector shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(d) **Jurisdiction**—An action to enforce any liability created by this subchapter may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within one year from the date on which the violation occurs.

(e) **Advisory opinions of Commission**—No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any advisory opinion of the Commission, notwithstanding that after such act or omission has occurred, such opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

§ 1692l. Administrative enforcement [Section 814 of Pub. Law]

(a) **Federal Trade Commission**—Compliance with this subchapter shall be enforced by the Commission, except to the extent that enforcement of the requirements imposed under this subchapter is specifically committed to another agency under subsection (b) of this section. For purpose of the exercise by the Commission of its functions and powers under the Federal Trade Commission Act, a violation of this subchapter shall be deemed an unfair or deceptive act or practice in violation of that Act. All of the functions and powers of the Commission under the Federal Trade Commission Act are available to the Commission to enforce

compliance by any person with this subchapter, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act, including the power to enforce the provisions of this subchapter in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule.

(b) **Applicable provisions of law**⁴—Compliance with any requirements imposed under this subchapter shall be enforced under—

- (1) section 8 of the Federal Deposit Insurance Act, in the case of—
 - (A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;
 - (B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25(a) of the Federal Reserve Act, by the Board of Governors of the Federal Reserve System; and
 - (C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;
- (2) section 8 of the Federal Deposit Insurance Act, by the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation;
- (3) the Federal Credit Union Act, by the National Credit Union Administration with respect to any Federal credit union;
- (4) subtitle IV of Title 49, by the Secretary of Transportation with respect to all carriers subject to the jurisdiction of the Surface Transportation Board;
- (5) the Federal Aviation Act of 1958, by the Secretary of Transportation with respect to any air carrier or any foreign air carrier subject to that Act; and
- (6) the Packers and Stockyards Act, 1921 (except as provided in section 406 of that Act), by the Secretary of Agriculture with respect to any activities subject to that Act.

The terms used in paragraph (1) that are not defined in this subchapter or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

(c) **Agency powers**—For the purpose of the exercise by any agency referred to in subsection (b) of this section of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this subchapter shall be deemed to be a violation of a requirement imposed under that Act. In addition to

⁴ 15 U.S.C. § 1692l amended by Pub. L. No. 95-473 § 3(b), 92 Stat. 1466 (Oct. 17, 1978); Pub. L. No. 95-630 Title V § 501, 92 Stat. 3680 (Nov. 10, 1978); Pub. L. No. 98-443 § 9n, 98 Stat. 1708 (Oct. 4, 1984); Pub. L. No. 101-73, Title VII § 744(n), 103 Stat. 440 (Aug. 9, 1989); Pub. L. No. 102-242, Title II § 212(e), 105 Stat. 2301 (Dec. 19, 1991); Pub. L. No. 102-550, Title XVI § 1604(a)(8), 106 Stat. 4082 (Oct. 28, 1992); Pub. L. No. 104-88, Title III § 316, 109 Stat. 949 (Dec. 29, 1995).

its powers under any provision of law specifically referred to in subsection (b) of this section, each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this subchapter any other authority conferred on it by law, except as provided in subsection (d) of this section.

(d) **Rules and Regulations**—Neither the Commission nor any other agency referred to in subsection (b) of this section may promulgate trade regulation rules or other regulations with respect to the collection of debts by debt collectors as defined in this subchapter.

§ 1692m. Reports to Congress by the Commission [Section 815 of Pub. Law]

(a) Not later than one year after the effective date of this subchapter and at one-year intervals thereafter, the Commission shall make reports to the Congress concerning the administration of its functions under this subchapter, including such recommendations as the Commission deems necessary or appropriate. In addition, each report of the Commission shall include its assessment of the extent to which compliance with this subchapter is being achieved and a summary of the enforcement actions taken by the Commission under section 1692l of this title.

(b) In the exercise of its functions under this subchapter, the Commission may obtain upon request the views of any other Federal agency which exercises enforcement functions under section 1692l of this title.

§ 1692n. Relation to State laws [Section 816 of Pub. Law]

This subchapter does not annul, alter, or affect, or exempt any person subject to the provisions of this subchapter from complying with the laws of any State with respect to debt collection practices, except to the extent that those laws are inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency. For purposes of this section, a State law is not inconsistent with this subchapter if the protection such law affords any consumer is greater than the protection provided by this subchapter.

§ 1692o. Exemption for State regulation [Section 817 of Pub. Law]

The Commission shall by regulation exempt from the requirements of this subchapter any class of debt collection practices within any State if the Commission determines that under the law of that State that class of debt collection practices is subject to requirements substantially similar to those imposed by this subchapter, and that there is adequate provision for enforcement.

A.3 Senate Report No. 95-382 on the Fair Debt Collection Practices Act⁵

Report of the Committee on Banking,
Housing and Urban Affairs
U.S. Senate
Aug. 2, 1977

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The Committee on Banking, Housing, and Urban Affairs, to which was referred the bill (H.R. 5294) to amend the Consumer Credit Protection Act to prohibit abuses by debt collectors, having considered same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

HISTORY OF THE LEGISLATION

On May 12 and 13, 1977, the Consumer Affairs Subcommittee held hearings on four bills to regulate debt collection practices: S. 656, introduced by Senator Biden; S. 918, introduced by Senator Riegle; S. 1130, introduced by Senator Garn for himself and Senators Schmitt and Tower; and H.R. 5294, passed by the House of Representatives on April 4, 1977. After these hearings and before markup by the committee, Senator Riegle offered a composite bill, designated Committee Print No. 1, as a substitute for S. 918.

The Committee met in open markup sessions on June 30 and July 26, 1977, and approved Committee Print No. 1, with amendments, by voice vote. The committee substituted the text of its bill for that of H.R. 5294, which is herewith reported without objection.

NATURE AND PURPOSE OF THE BILL

This legislation would add a new title to the Consumer Credit Protection Act entitled the Fair Debt Collection Practices Act. Its purpose is to protect consumers from a host of unfair, harassing, and deceptive debt collection practices without imposing unnecessary [Page 2] restrictions on ethical debt collectors. This bill was strongly supported by consumer groups, labor unions, State and Federal law enforcement officials, and by both national organizations which represent the debt collection profession, the American Collectors Association and Associated Credit Bureaus.

NEED FOR THIS LEGISLATION

The committee has found that debt collection abuse by third party debt collectors is a widespread and serious national problem. Collection abuse takes many forms, including obscene or profane language, threats of violence, telephone calls at unreasonable hours, misrepresentation of a consumer's legal rights, disclosing a consumer's personal affairs to friends, neighbors, or an employer, obtaining information about a consumer through false pretense, impersonating public officials and attorneys, and simulating legal process.

Debt collection by third parties is a substantial business which

touches the lives of many Americans. There are more than 5,000 collection agencies across the country, each averaging 8 employees. Last year, more than \$5 billion in debts were turned over to collection agencies. One trade association which represents approximately half of the Nation's independent collectors states that in 1976 its members contacted 8 million consumers.

Hearings before the Consumer Affairs Subcommittee revealed that independent debt collectors are the prime source of egregious collection practices. While unscrupulous debt collectors comprise only a small segment of the industry, the suffering and anguish which they regularly inflict is substantial. Unlike creditors, who generally are restrained by the desire to protect their good will when collecting past due accounts, independent collectors are likely to have no future contact with the consumer and often are unconcerned with the consumer's opinion of them. Collection agencies generally operate on a 50-percent commission, and this has too often created the incentive to collect by any means.

The primary reason why debt collection abuse is so widespread is the lack of meaningful legislation on the State level. While debt collection agencies have existed for decades, there are 13 States, with 40 million citizens, that have no debt collection laws. These States are Alabama, Delaware, Georgia, Kansas, Kentucky, Mississippi, Missouri, Montana, Ohio, Oklahoma, Rhode Island, South Carolina, and South Dakota. Another 11 States (Alaska, Arkansas, Indiana, Louisiana, Nebraska, New Jersey, Oregon, Pennsylvania, Utah, Virginia and Wyoming), with another 40 million citizens, have laws which in the committee's opinion provide little or no effective protection. Thus, 80 million Americans, nearly 40 percent of our population, have no meaningful protection from debt collection abuse.

While 37 States and the District of Columbia do have laws regulating debt collectors, only a small number are comprehensive statutes which provide a civil remedy. As an example of ineffective State laws, of the 16 states which regulate by debt collection boards, 12 require by law that a majority of the board be comprised of debt collectors.

The Committee has found that collection abuse has grown from a State problem to a national problem. The use of WATS lines by debt collectors has led to a dramatic increase in interstate collections. State [Page 3] law enforcement officials have pointed to this development as a prime reason why federal legislation is necessary, because State officials are unable to act against unscrupulous debt collectors who harass consumers from another State.

One of the most frequent fallacies concerning debt collection legislation is the contention that the primary beneficiaries are "deadbeats." In fact, however, there is universal agreement among scholars, law enforcement officials, and even debt collectors that the number of persons who willfully refuse to pay just debts is miniscule. Prof. David Caplovitz, the foremost authority on debtors in default, testified that after years of research he has found that only 4 percent of all defaulting debtors fit the description of "deadbeat." This conclusion is supported by the National Commission on Consumer Finance which found that creditors list the willful refusal to pay as an extremely infrequent reason for default.

The Commission's findings are echoed in all major studies: the vast majority of consumers who obtain credit fully intend to repay their debts. When default occurs, it is nearly always due to an unforeseen event such as unemployment, overextension, serious illness, or marital difficulties or divorce.

⁵ § 3.2.2, *supra*, describes the legislative history for the Fair Debt Collection Practices Act, and the key place of Senate Report No. 95-382 in that process.

The committee believes that the serious and widespread abuses in this area and the inadequacy of existing State and Federal laws make this legislation necessary and appropriate.

EXPLANATION OF THE LEGISLATION

Scope of the act

This bill applies only to debts contracted by consumers for personal, family, or household purposes; it has no application to the collection of commercial accounts.

The committee intends the term "debt collector," subject to the exclusions discussed below, to cover all third persons who regularly collect debts for others. The primary persons intended to be covered are independent debt collectors. The requirement that debt collection be done "regularly" would exclude a person who collects a debt for another in an isolated instance, but would include those who collect for others in the regular course of business. The definition would include "reciprocal collections" whereby one creditor regularly collects delinquent debts for another pursuant to a reciprocal service agreement, unless otherwise excluded by the act.

The term debt collector is not intended to include the following: "in house" collectors for creditors so long as they use the creditor's true business name when collecting; Government officials, such as marshals and sheriffs, while in the conduct of their official duties; process servers; nonprofit consumer credit counseling services which assist consumers by apportioning the consumer's income among his creditors pursuant to a prior arrangement; and attorneys-at-law while acting in that capacity. One subsidiary or affiliate which collects debts for another subsidiary or affiliate is not a "debt collector" so long as the collecting affiliate collects only for other related entities and its principal business is not debt collection.

Finally, the committee does not intend the definition to cover the activities of trust departments, escrow companies, or other bona fide fiduciaries; the collection of debts, such as mortgages and student loans, by persons who originated such loans; mortgage service companies and others who service outstanding debts for others, so long as the debts were not in default when taken for servicing; and the collection of debts owed to a creditor when the collector is holding the receivable account as collateral for commercial credit extended to the creditor.

Obtaining location information

While this legislation strongly protects the consumer's right to privacy by prohibiting a debt collector from communicating the consumer's personal affairs to third persons, the committee also recognizes the debt collector's legitimate need to seek the whereabouts of missing debtors. Accordingly, this bill permits debt collectors to contact third persons for the purpose of obtaining the consumer's location. In seeking this information, however, the debt collector must observe certain guidelines: he may not state that the consumer owes a debt nor contact third persons more than once unless necessary to obtain complete information. In addition, a debt collector may not place language or symbols on mail to third persons indicating that the mail relates to debt collection nor continue to contact third parties after learning the name and address of the consumer's attorney, unless the attorney fails to respond to the debt collector's communications.

Prohibited practices

This legislation expressly prohibits a host of harassing, deceptive, and unfair debt collection practices. These include: threats of violence; obscene language; the publishing of "shame lists;" harassing or anonymous telephone calls; impersonating a government official or attorney; misrepresenting the consumer's legal rights; simulating court process; obtaining information under false pretenses; collecting more than is legally owing; and misusing postdated checks. In addition to these specific prohibitions, this bill prohibits in general terms any harassing, unfair, or deceptive collection practice. This will enable the courts, where appropriate, to proscribe other improper conduct which is not specifically addressed.

In addition, this legislation adopts an extremely important protection recommended by the National Commission on Consumer Finance and already the law in 15 States: it prohibits disclosing the consumer's personal affairs to third persons. Other than to obtain location information, a debt collector may not contact third persons such as a consumer's friends, neighbors, relatives, or employer. Such contacts are not legitimate collection practices and result in serious invasions of privacy, as well as the loss of jobs.

Validation of debts

Another significant feature of this legislation is its provision requiring the validation of debts. After initially contacting a consumer, a debt collector must send him or her written notice stating the name of the creditor and the amount owed. If the consumer disputes the validity of the debt within 30 days, the debt collector must cease collection until he sends the consumer verification.

This provision will eliminate the recurring problem of debt collectors dunning the wrong person or attempting to collect debts which the consumer has already paid. Since the current practice of most debt collectors is to send similar information to consumers, this provision will not result in additional expense or paperwork.

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Legal actions by debt collectors

This legislation also addresses the problem of "forum abuse," an unfair practice in which debt collectors file suit against consumers in courts which are so distant or inconvenient that consumers are unable to appear. As a result, the debt collector obtains a default judgment and the consumer is denied his day in court.

In response to this practice, the bill adopts the "fair venue standards" developed by the Federal Trade Commission. A debt collector who files suit must do so either where the consumer resides or where the underlying contract was signed. When an action is against real property, it must be brought where such property is located.

More than 1,000 collection agencies in all 50 States have already voluntarily agreed to follow these standards. The Commission reports that this standard is effective in curtailing forum abuse without unreasonably restricting debt collectors.

Furnishing deceptive forms

Another common collection abuse is known colloquially as "flat-rating." A "flat-rater" is one who sells to creditors a set of dunning letters bearing the letter-head of the flat-rater's collection agency and exhorting the debtor to pay the creditor at once. The

creditor sends these letters to his debtors, giving the impression that a third party debt collector is collecting the debt. In fact, however, the flat-rater is not in the business of debt collection, but merely sells dunning letters.

This bill prohibits the practice of flat-rating because of its inherently deceptive nature. The prohibition on furnishing such forms does not apply, however, to printers and custom stationery sellers who innocently print or sell such forms without knowledge of their intended use.

Civil liability

The committee views this legislation as primarily self-enforcing; consumers who have been subjected to collection abuses will be enforcing compliance.

A debt collector who violates the act is liable for any actual damages he caused as well as any additional damages the court deems appropriate, not exceeding \$1,000. In assessing damages, the court must take into account the nature of the violation, the degree of willfulness, and the debt collector's persistence. A debt collector has no liability, however, if he violates the act in any manner, including with regard to the act's coverage, when such violation is unintentional and occurred despite procedures designed to avoid such violations. A debt collector also has no liability if he relied in good faith on an advisory opinion issued by the Federal Trade Commission.

As in all other Federal consumer protection legislation, a consumer who obtains judgment on his behalf is entitled to attorney's fees and costs. In order to protect debt collectors from nuisance lawsuits, if the court finds that an action was brought by a consumer in bad faith and for harassment, the court may award the debt collector reasonable attorney's fees and costs.

Administrative enforcement

This legislation is enforced administratively primarily by the Federal Trade Commission. If a depository institution subject to regulation by another Federal agency engages in debt collection, administrative enforcement authority is lodged with that agency.

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All enforcement agencies are authorized to utilize all their functions and powers to enforce compliance. The Federal Trade Commission is authorized to treat violations of the act as violations of a trade regulation rule, which empowers the Commission to obtain restraining orders and seek fines in federal district court.

Because the committee regards this as comprehensive legislation which fully addresses the problem of collection abuses, the administrative agencies charged with enforcement are specifically prohibited from issuing additional rules or regulations applicable to persons covered by this legislation.

Relation to State law

The Committee believes that this law ought not to foreclose the States from enacting or enforcing their own laws regarding debt collection. Accordingly, this legislation annuls only "inconsistent" State laws, with stronger State laws not regarded as inconsistent. In addition, States with substantially similar laws may be exempted from the act's requirements (but not its remedies) by applying to the Federal Trade Commission.

COST OF THIS LEGISLATION

Enactment of this legislation will result in no new or additional costs to the Federal Government. The Congressional Budget Office analysis of this bill is contained in the following letter:

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, D.C., July 27, 1977.

HON. WILLIAM PROXMIRE,
Chairman, Committee on Banking, Housing, and Urban Affairs,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 5294, a bill to amend the Consumer Credit Protection Act to prohibit abusive practices by debt collectors, as ordered reported by the Senate Committee on Banking, Housing and Urban Affairs, July 26, 1977.

Based on this review, it appears that no additional cost to the Government would be incurred as a result of enactment of this bill.

Sincerely,
Alice M. Rivlin, *Director*.

CHANGES IN EXISTING LAW

In the opinion of the Committee, it is necessary to dispense with the requirements of subsection 4 of Rule XXIX of the Standing Rules of the Senate in order to expedite the business of the Senate.

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SECTION-BY-SECTION SUMMARY

Section 801. Short title.—The act may be cited as the "Fair Debt Collection Practices Act."

Section 802. Findings and purpose.—The Congress finds that collection abuses by independent debt collectors are serious and widespread and that existing State laws are inadequate to curb these abuses. The purpose of the title is to eliminate abusive practices, not disadvantage ethical debt collectors, and promote consistent state action.

Section 803. Definitions.—The term "debt collector" is defined to include all third parties who regularly collect consumer debts for others, except for the following persons: "in house" collectors for creditors; affiliates collecting for one another, providing that collection is not the principal business of the affiliate; Government officials collecting in their official capacities; process servers; bona fide consumer credit counseling services; and attorneys-at-law. The term also does not include trust companies and other bona fide fiduciaries; persons collecting loans which they originated; persons who service debts for others; and persons holding receivables as collateral for commercial credit transactions.

Section 804. Acquisition of location information.—When contacting third persons to establish a consumer's whereabouts, a debt collector may not: state that the consumer owes a debt; contact the third person more than once unless reasonably necessary; or use language symbols on mail indicating that it pertains to debt collection. A debt collector may not contact a third person if the

debt collector knows that the consumer is represented by an attorney and has the attorney's name and address.

Section 805. Communication in connection with debt collection.—Without the consumer's consent, a debt collector may not (a) contact a consumer at any unusual or inconvenient time or place (8 a.m. to 9 p.m. is considered convenient); (b) contact a consumer if he is represented by an attorney; or (c) call a consumer at work if the debt collector knows the consumer's employer prohibits such calls.

There is a general prohibition on contacting any third parties (other than to obtain location information) except for: the consumer's attorney; a credit reporting agency; the creditor; the creditor's or debt collector's attorney; or any other person to the extent necessary to effectuate a postjudgment judicial remedy.

If a consumer notifies a debt collector in writing that he refuses to pay a debt or wishes the debt collector to cease further contacts, the debt collector must cease communications except to notify the consumer of the debt collector's or creditor's possible further actions.

Section 806. Harassment or abuse.—A debt collector is prohibited from engaging in any conduct the natural consequence of which is to harass, oppress or abuse any person. The following enumerated practices are violations: threats of violence; use of profane or obscene language; publishing "shame lists"; repeated telephone calls intended [Page 8] to annoy or harass; and making telephone calls without disclosing the caller's identity.

Section 807. False or misleading representations.—A debt collector is prohibited from using any false, deceptive or misleading representations to collect debts. The following enumerated practices are violations: misrepresenting that a debt collector is a government official; misrepresenting the amount or nature of a debt; impersonating an attorney; misrepresenting that a consumer will be arrested or his property seized; misrepresenting a consumer's legal rights; deliberately communicating false credit information; utilizing bogus legal documents; and misrepresenting a collection agency as a credit bureau.

Section 808. Unfair practices.—A debt collector is prohibited from using any unfair or unconscionable means to collect debts. The following enumerated practices are violations: collecting amounts in excess of the debt or interest owed; causing charges for communications to be billed to a consumer; repossessing property if there is no valid security interest or if it is exempt by law from repossession; communicating information about a debt by postcard; and using symbols on envelopes indicating that the contents pertain to debt collection.

Section 809. Validation of debts.—Within 5 days after contacting a consumer, the debt collector must in writing notify the consumer of the amount of the debt and the name of the creditor and advise the consumer of the debt collector's duty to verify the debt if it is disputed. If a consumer disputes a debt within 30 days, the debt collector must stop collection until verification is sent to the consumer.

Section 810. Multiple debts.—A debt collector is prohibited from applying payments to disputed debts and, where applicable, must apply payments in accordance with the consumer's directions.

Section 811. Legal actions by debt collectors.—Actions on real property are required to be brought in the judicial district in which the property is located. In personal actions, suits must be brought either where the contract was signed or where the consumer resides.

Section 812. Furnishing certain deceptive forms.—It is made unlawful to compile, design, and furnish forms knowing that they will be used to create the false impression that a third person is collecting a debt.

Section 813. Civil liability.—A debt collector who violates the Act is liable for actual damages plus costs and reasonable attorney's fees. The court may award additional damages of up to \$1,000 in individual actions, and in class actions, up to \$500,000 or 1 percent of the debt collector's net worth, whichever is less.

Two defenses are provided: good faith reliance on an F.T.C. advisory opinion; and bona fide error notwithstanding procedures to avoid the error. Where a court finds that a suit was brought by a consumer in bad faith and for harassment, the court may award reasonable attorney's fees to the defendant.

Jurisdiction for actions is conferred on U.S. district and state courts; there is a 1 year statute of limitations.

Section 814. Administrative enforcement.—The Act is administratively enforced by the F.T.C. and the Federal bank regulatory agencies. The agencies are empowered to use all their functions and powers to enforce compliance. The agencies are prohibited from promulgating any additional rules or regulations pertaining to debt collectors.

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Section 815. Reports to Congress by the Commission.—The F.T.C. shall provide annual reports to Congress on the Act's effectiveness and administrative enforcement.

Section 816. Relation to State laws.—The act annuls state laws only if inconsistent; a state law is not inconsistent if it provides greater protection than this title.

Section 817. Exemption for State regulation.—The F.T.C. may exempt from the Act any collection practices within any State if subject to substantially similar requirements.

Section 818. Effective date.—The act is effective 6 months from enactment.

ADDITIONAL VIEWS OF MESSRS SCHMITT, GARN AND TOWER

It is our view that the Fair Debt Collection Practices Act is an unwarranted Federal intrusion into an area best left to the States. Although we recognize that some debt collectors employ unconscionable practices in collecting debts, we do not feel that the hearings in either the House or Senate subcommittees produced substantial evidence that there is a serious national problem which justifies such detailed Federal regulation of the operation of the business of collecting debts. A far better approach is that contained in S. 1130 which would preserve the States' prerogative of providing a mechanism for the resolution of disputes between debtors and creditors while correcting identified abuses in irresponsible debt collectors operating in interstate commerce. According to an American Bar Association committee, 33 States have already adopted debt collection practices regulation and others are moving in that direction.

Of particular concern to us is the impact that the proliferation of Federal consumer credit regulation is having on small business and on the cost and availability of credit to the consumer. A Federal Fair Debt Collection Practice Act will be one more regulatory burden on small business, the cost of which will be borne by the consumer.

Although we would not take the approach chosen by the majority of the committee, the committee report is a vast improvement over H.R. 5294 passed by the House. We are pleased that the committee included in its final version of the bill many provisions contained in S. 1130. Most important, it dropped the \$100 minimum civil penalty provision which courts have construed as requiring the award of the penalty and attorneys fees when a violation of the Act has been established.

This should go a long way in avoiding the type of nuisance suits so prevalent under the Truth in Lending Act.

Harrison Schmitt.
Jake Garn.
John Tower.